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FILED
FEB 25 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 618

W. F. EDWARDS,
Petitioner,
Versus
COMMISSIONER OF INTERNAL REVENUE,
Respondent

and

L. C. EDWARDS, JR.,
Petitioner,
Versus
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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THE FREE PRESS, TAMPA, FLORIDA

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To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioners in these causes consolidated for hearing and decision pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in these causes.

OPINIONS BELOW

The opinion of The Tax Court of the United States is reported at 20 TC 615. It appears at pages 65 et seq. of the transcript herewith filed.

The opinion of the Court of Appeals has not been reported. It appears as page 97 of the transcript herewith filed, and because not included within the printed record below is reproduced as Appendix A.

JURISDICTION

The Judgment of the Court of Appeals was entered on January 18, 1955 (Tr 98).

Jurisdiction to issue the writ rests on Title 28, United States Code § 1254.

QUESTIONS PRESENTED FOR REVIEW

The questions in this case cannot be presented without a reference to a case recently decided by this Court, *Watson v. Commissioner,* 345 US 544, 97 L ed 1232. Under the facts of that case a value was attributed to growing citrus crops on a grove which the taxpayer sold, and to the extent of that value she was determined to have realized ordinary income rather than capital gains. It is claimed that the instant case is not only distinguishable on its facts, but that the *Watson* case (1) was determined on incomplete information concerning the legislative history of a statute, and (2) applied a principle which is at variance with the previously decided cases of this Court. In terms of those contentions the questions presented are:

1. In the *Watson* case this Court based its decision on the 1951 amendment to section 117 (j) which added subsection 117 (j) (3), and on the grounds that that amendment and its legislative history demonstrated that:

   (1) in order for such income to be a capital gain, an affirmative statement by Congress was needed; and

   (2) the character of the gain resulting from sale of lands and unharvested crops is necessarily a subject of federal law.

   If the complete legislative history of the 1951 amendment to section 117 (j) demonstrates that Congress intended merely to clarify previously existing law, then can such a determination by this Court stand?

2. Can a court appropriately utilize subsequent legislation (and its legislative history) to interpret the Congressional intention with respect to legislation passed many years prior thereto?

   As we shall show, this will be a problem of extreme importance in judicial interpretations with respect to the Internal Revenue Code of 1954.

3. If, as in the instant case, it is claimed and shown by expert testimony, that in their then incipient status some particular unharvested crops have *no* value separate and apart from the tree, then how can it be said that they have any value for purposes of allocating the purchase price received?

STATUTES INVOLVED

The statute directly involved is § 117 (j) of the Internal Revenue Code of 1939 (26 USC § 117 (j)), as it was before its amendment in 1951. Pertinent provisions are as follows:

> "(j) Gains and Losses From Involuntary Conversion and From the Sale or Exchange of Certain Property Used in the Trade or Business. —
>
> (1) Definition of property used in the trade or business. —
>
> For the purposes of this subsection, the term 'property used in the trade or business' means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (1), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business * * *.
>
> (2) General Rule. — If during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, * * * exceed the recognized losses from such sales or exchanges * * * such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets." * * *

Indirectly involved is Subsection 117 (j) (3) of the Internal Revenue Code of 1939 as added by Section 323 of the Internal Revenue Act of 1951 (26 USC § 117 (j) (3)), reading as follows:

> "(3) Sale of land with unharvested crop. — In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted as described in paragraph (2)) at the same time and to the same person, the crop shall be considered as 'property used in the trade or business'."

STATEMENT OF THE CASE

These cases were in the Court of Appeals on petitions for review of decisions of The Tax Court of the United States entered February 26, 1954. Both decisions are based on a common opinion of the court and both cases are substantially the same, involving the income tax results of sales of undivided one-half interests in the same real estate owned by each of the petitioners.

On September 24 and October 15, 1945, W. F. Edwards and L. C. Edwards, Jr., each sold an undivided one-half interest in certain citrus groves known as the Thonotosassa and the Fechtig groves (Tr 48, 56, 24, 25, 29, 45, 46).

Each of the citrus groves disposed of by the petitioners was sold for a lump-sum consideration (Tr 47). There was no mature fruit on the groves sold by the two trusts at the time of the sales; there were no early oranges in either grove (Tr 28, 29).

Each of the citrus groves disposed of by the petitioners had been held in excess of six months.

Both petitioners were in the business of growing citrus fruits, which, when mature, were harvested and sold by a marketing cooperative (Tr 25, 30, 31). Neither petitioner was, either during the year 1945 or for many years prior thereto, engaged in the business of buying and selling citrus grove property or in the business of buying and selling citrus fruits (Tr 25, 27, 30, 31).

The petitioners therefore contended before The Tax Court of the United States, and here renew the contention, that the sales of their citrus groves for lump-sum considerations (the land, trees and unharvested crops included) did not include the sale of any

> " . . . property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business . . ." (Internal Revenue Code § 117 (j); 26 USC § 117 (j)).

They were thus entitled, under Section 117 (j) of the Internal Revenue Code, to capital gains treatment of that part of the proceeds representing their gains on such sales.

By uncontradicted expert testimony (Tr 32-41) these petitioners demonstrated that there could be no practical severance or segregation of citrus fruit from the tree before maturity of the fruit. The salient facts of that testimony are given in the following paragraphs.

An immature orange is a part of the tree. (Tr. 33, 41) The chemical composition of the green peel of the fruit and of the leaf of the tree are almost identical; and the green peel of the fruit acts like the green part of the leaf (Tr. 33). It serves the same function as a leaf up to a certain point (Tr 36). As the peel begins to turn

yellow (about October 15 on the earlier varieties, and December 15 on the mid-season and later varieties), its composition changes (Tr 37).

An orange in its immature state is not fit for human consumption or use. If any form of citrus fruit is severed from the tree before maturity, there is no use to which it could be put (Tr 33). When an orange is taken off the tree, it is as ripe as it will ever get. It does not change (Tr. 36).

By way of clarification, the starchy fruits ripen after being picked because, by enzyme activity, some of the starch is changed to sugar. But there is no starch in an orange or any other citrus fruit (Tr 36).

As the opinion of Judge Turner of the Tax Court states, during the pendency of this case in the Tax Court, The Supreme Court of the United States decided the case of *Watson v. Commissioner,* 345 US 544 (Tr 69). The Tax Court took that decision as deciding the instant case.

BASIS OF FEDERAL JURISDICTION

Federal jurisdiction in The Tax Court of the United States is based on § 272 of the Internal Revenue Code of 1939 (26 USC § 272); and of the Court of Appeals on § 1141 of the Internal Revenue Code of 1939 (26 USC § 1141).

ARGUMENT

I

The Complete Legislative History of Section 323 of the Internal Revenue Act of 1951 Demonstrates that Amendment of Section 117 (j) of the Internal Revenue Code (1939) Was Not Intended to Change Existing Law.

In *Watson v. Commissioner,* 345 US 544, 547-548, it is apparent that this Court's decision against the taxpayer was basically founded on its interpretation of the adoption by Congress of Section 323 of the Internal Revenue Act of 1951 (amending Section 117 (j) of the Internal Revenue Code of 1939 by the addition of subsection 117 (j) (3)). This Court found that —

> "The adoption of that amendment emphasized the point that the question was one of federal law. Its adoption also recognized that, in order for such income to be a capital gain, an affirmative statement by Congress was needed."

And the Court later reiterates its interpretation so derived that " . . . . the federal income tax upon the gain resulting from its sale is, in its nature, a subject of federal law." (at p 551).

The only legislative history of that amendment on which the Court relied (and the only legislative history submitted, by respondent, on brief), was the Report of the Senate Committee on Finance (note 6, at page 549; and dissenting opinion at page 558).

We respectfully submit that, if the legislative history of Section 323 of the Revenue Act of 1951 had been brought before the Court in its entirety, this Court

would have found that the intention of the Congress in its enactment was contrary to that which it expressed in its opinion in the *Watson* case.

The Complete Legislative History of Section 323 of the Revenue Act of 1951 (Section 117 (j), as Amended 1951).

The report of the Senate Committee on Finance on the Revenue Act of 1951 was issued and ordered to be printed on September 18, 1951. Section 323 was a provision added by the Committee (Senate Report No. 781, 82nd Congress, 1st Session 46-48) after Committee hearings held in September and up until the date of the report. The Committee hearings were held on HR 4473 as it passed the House of Representatives without these and other Committee-added amendments; and like many others, it was not even discussed in the public hearings before the Committee.

The Senate immediately started consideration of the amended HR 4473; and that the Report of the Senate Committee on Finance was assembled so hastily that errors in its presentation were inevitable is evidenced not only by the speed of its preparation, but by the presence of a glaring error in the report's discussion of this very section.

Section 323 of the Revenue Act of 1951 amended Section 117 (j) of the Internal Revenue Code, which provided for capital gains treatment for property disposed of by the taxpayer which had been "property used in the trade or business of the taxpayer."

Section 323 (a) (1) of that Act added to the definition of "property used in the trade or business" in Section 117 (j) (1), so that that section now provides that

"Such term also includes . . . unharvested crops to which paragraph (3) is applicable." Section 323 (a) (2) added paragraph (3) to Code Section 117 (j) to provide that where there is an unharvested crop on land which is used in the trade or business and held for more than 6 months, if the crop and the land are sold at the same time and to the same person "the crop shall be considered as 'property used in the trade or business.' " Section 323 (b) (1) of the 1951 Act also added Section 24 (f) to the Code, to provide that where an unharvested crop is considered as property having the benefits of Code Section 117 (j), no deduction should be allowed in computing net income (whether or not in the year of the sale) with respect to any expenses attributable to the production of the crop. Section 323 (b) (2) amended Code Section 113 (b) (1) so that the deductions disallowed under Code Section 24 (f) would be added to the basis of the property. By Section 323 (c), these amendments were made effective only with respect to sales or exchanges occurring in taxable years after December 31, 1950, and, with respect to the disallowance of deductions and change in basis, only with respect to years affected by transactions occurring subsequent to December 31, 1950.

The Senate Report on that amendment, as published by the Committee for the use of the Congress, in at least one important respect simply did not make sense. As printed the second paragraph reads:

> "The Bureau of Internal Revenue has ruled that whether or not such crops or fruit are regarded as a part of the real estate under local law, they constitute property held 'primarily for sale to customers in the ordinary course of his (the taxpayer's) trade or business' and thus, under the provisions of section 117 (j), any gain on the sale of the unharvest-

> ed crops of unripe fruit is to be separately determined and treated as ordinary income instead of as a capital gain. In several decisions the Tax Court (with some members dissenting) has taken a similar view, but two district courts have held that such fruits or crops constitute 'property used in the trade or business' so that a gain from a sale of the land, trees, and fruit would be treated as a capital gain with the result that the entire gain from the sale of such property would constitute *ordinary income.*" (Emphasis supplied)

The last two words of that paragraph should have read "capital gain" instead of "ordinary income"; and this error, *along with five others*, was not corrected by the Senate until September 28, 1951, about five minutes before the passage of the Act by that body (*Congressional Record*, Vol 97, No. 182, 82nd Congress, 1st Session, pp 1263-32).

Thus the real purpose and meaning of Section 323 of the 1951 Act must appear, not from the hurried and admittedly inaccurate summary of the Senate Report, but from the later more thoughtful presentation by the proponents of that section, by the understanding of the managers in conference, and by the more seasoned views of the Staffs of the Joint Committee in Summary on the conference bill.

These clearly demonstrate that Congress intended Section 323 to correct a misinterpretation of existing law by the Commissioner and the Tax Court.

In the last few hours of debate on the 1951 Act, Senator Holland as a proponent of the bill and this section in particular, made the only statement in explanation of this section which was made on the floor of the Senate:

"Mr. President, there are many good features in this bill which have not been commented upon. I am sorry that the time limitation prevents me from doing any more than to call attention to a provision which I have not heard mentioned and that is the change of the capital gains tax as it applies to a citrus grove, an apple orchard, or any other farming property in this Nation when it is sold, after ownership of more than 6 months, as a property with an unharvested crop on it.

"Under the very unwise ruling, it seems to me, of the Internal Revenue Bureau, such a sale has been regarded as a double sale, and the tax authorities have forced a division which did not exist at all in the minds of those who made the sale and the purchase — an artificial division of the sale of the real estate from the sale of the unharvested crop. Under the amendment which is placed in the bill, if the property has been held 6 months that result will no longer be permitted, but, instead, the sale will be treated just as it has actually existed, as a single sale of a developed property with a feature on it, an unharvested crop, which entered into that single sale without the artificial handling required in some jurisdictions under the present rule, which, by the way, is not uniformly approved by the courts. Some courts have approved the rule of the Internal Revenue Bureau and some have frowned upon it. The result of the amendment is to make uniform this matter and to give a fair deal to our agricultural people all over the Nation.

"I call attention to the fact, Mr. President, that this is a matter which does not generally concern the very rich people. This is something that applies to the farmers, small and large, who will be permitted to sell their properties now with security, whereas *they have been denied that security under the law as it is now mistakenly enforced.*

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"I may say that I appreciate the fact that those Senators who have attacked all other changes in the capital gains law, or at least most of them, have by their failure to do so in this case shown their approval of this particular change in the law." (Emphasis supplied).

Congressional Record, Vol 97, No. 182, 82nd Cong., 1st Sess p 12625. (1)

Even more important is the summary statement of his section by the conference managers on the part of he House. This statement appears in *both* conference eports (the House rejected the first conference report), nd explains section 323 as follows:

"Amendment No. 63: This amendment provides *rules for the application of Section* 117 (j) in cases where land bearing an unharvested crop is sold. The provision applies in cases where the land has been held for more than 6 months. The period that the crop has been on the land is immaterial. The House recedes." (Emphasis supplied)

Congressional Record, Vol 97, 82nd Cong., 1st Sess., p. 13785.

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1) Senator Holland was incorrect in concluding that there had been no comment on this section by others of the Senators. Senator Humphrey had commented on it briefly, and with an apparent complete lack of understanding of its purposes. *Congressional Record,* Vol 97, No. 176, 82nd Cong., 1st Sess, p 12053. But it must be remembered that Senator Humphrey was not interested in the refinements of § 117 (j) of the Code. He wanted *to do away with § 117 (j) altogether. Congressional Record,* Vol 97, No. 176, 82nd Cong., 1st Sess. "Unless the rate structure for ordinary income is to be junked by making capital gains rates of universal application, section 117 (j) should be repealed, and we are offering an amendment to that effect."

Thus in the only official document representing House of Representatives' opinion, this section changes no law. It provides *rules for the application* of the existing provisions of Section 117 (j).

The sum total of the above is evident in the final analysis given this section under Congressional auspices. In the Summary prepared by the Staff of the Joint Committee on Internal Revenue Taxation, paraphrasing the purposes and provisions of the Revenue Act of 1951 (HR 4473) as agreed to by the Conferees (October, 1951), Section 323 was described as follows:

> "Section 117 (j) of the code provides, in effect, that a net gain from sales (including exchanges and involuntary conversions) of properties 'used in the trade or business' of the taxpayer, including 'real property' so used, if held more than 6 months is to be treated as a capital gain. In the case of a net loss, it is treated as an ordinary loss. *Where unharvested crops are sold with the land, or unripe fruit is sold together with the land and the trees, question has arisen as to the proper application of the present law to the unharvested crops or the unripe fruit.*
>
> "Section 323 of the bill *adopts* the *principle* that sales (including exchanges and involuntary conversions) of land, together with growing crops, are not such transactions as occur in the ordinary course of business and provides that the gain from the sale of the crop in such cases is to be treated as a capital gain rather than ordinary income, while a loss from such sale is to be treated as an ordinary loss. This is accomplished by applying section 117 (j) in the case of these sales. However, the bill provides that no deduction shall be allowed which is attributable to the production of such crops or fruit, but that the deductions so disallowed shall be included in the basis of the property for the purpose of computing the gain or loss from the sale.

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"The provisions of this section are applicable to sales or other dispositions occurring in taxable years beginning after December 31, 1950, except that deductions in years beginning prior to January 1, 1951, will be disallowed if they relate to sales or other dispositions made in taxable years beginning after that date. (Emphasis supplied)

It is perfectly evident therefore that the question was one of "proper application of present law"; and Section 323 adopted a *principle* intended to give that proper application.

We respectfully submit that if this Court misinterpreted a Congressional intention with respect to legislation affecting so vital a segment of our economy as agriculture, it should make every effort to undo that error, even if it means overruling a recent opinion of the Court.

II

The Use of Legislative History of Current Congressional Enactments in Interpreting Prior Statutes is Contrary to Principles of Interpretation Established by this Court; and Departure from this Doctrine will significantly Hamper Judicial Determinations of Pre-1954 Tax Cases in View of the Internal Revenue Code of 1954.

That this Court has long declined to utilize current legislation and its legislative history to interpret past Congressional action is apparent from numerous decisions:

Fogarty v. United States, 340 US 8, 13-14; 95 L ed 10, 15

Koshkomong v. Burton, 104 US 668, 678-679; 26 L ed 886,

United States v. Claflin, 97 US 546; 24 L ed 1082,

Penn Mutual Life Ins Co. v. Lederer, 252 US 523, 537, 538; 64 L ed 698,

Pampanga Sugar Mills v. Trinidad, 279 US 211, 218; 73 L ed 665,

United States v. United Mine Workers, 330 US 258, 281-282; 91 L ed 884,

We do not believe that it is appropriate for the judiciary to depart from that well-chartered course. The sea of statutory construction is difficult enough to navigate without adding additional hazards. Furthermore, to adopt a contrary view would raise important and primary constitutional objections. For if the judiciary permits the legislature, by later action, to interpret its earlier legislation, it is abdicating an essential judicial function. *Kilbourn v. Thompson,* 103 US 168, 191; 26 L ed 377.

We realize that, in arguing that this Court should not have considered the 1951 legislation at all in its construction of the pre-existing statute, we discount the possible favorable effect arising from its corrected understanding of the later law. But we believe that we can support the result for which we contend by reference to other doctrines of statutory construction (such as contemporaneous and continuous administrative interpretation); and because of the recent enactment of the Internal Revenue Code of 1954, the adherence to the doctrine prohibiting interpretations of existing law by incidental legislative references is vital.

The Committee Reports on the Internal Revenue Code of 1954 are voluminous and exhaustive documents. They are also pretentious; for in at least 86 instances

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(2) the Senate Report alone refers to what purports to be the *existing law*. In at least one instance it refers to the fact that a similar statement in the House Report was inaccurate by the time the bill reached the Senate. (3).

It would seem of paramount importance, therefore, to the administration of the revenue laws in the numerous existing controversies under the 1939 Code, that this Court consider, at its earliest opportunity, the extent to which it will consider itself bound by legislative interpretations of pre-existing statutes.

III

The Courts below Refused to Recognize as Distinguishing Facts the Horticultural Actualities Presented in this Cause.

It does not appear that in the *Watson* case, this Court had access to the horticultural actualities of citrus production presented by expert testimony in this cause. We contend that these facts, in conjunction with previous decisions of this Court, deny the assumption that the Congress intended for a "value" to be attributed to an unharvested citrus crop as a separate property for the purposes of the application of § 117 (j) of the Internal Revenue Code of 1939.

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(2) *Internal Revenue Code of 1954, Report of the Committee on* Finance, United States Senate (HR 8300), Report No. 1622, 83rd Congress, 2d Sessions; pp 9, 10 (2), 11, 12, 13, 14, 15, 16, 17 (2), 19, 22-23, 24, 30, 33, 34, 37, 38 (2), 48 (2), 50 (2), 51, 52, 53, 54 (2), 62, 63, 66, 68, 72 (3), 76, 77, 80, 82, 87-88, 89-92, 96-97, 103, 103-104, 106, 107, 109, 110, 111 (2), 112, 113 (2), 116, 117, 118, 120, 121, 123 (2), 124 (2), 125, 126, 128 (2), 179, 190 (2), 222 (2), 225, 239, 248, 301, 373, 388, 423, 426, 439, 463, 476, 480, 481, 584.

(3) Id., at page 248.

For it is the *intention of the Congress* with which we are dealing in attempting to apply § 117 (j) to specific transactions. *United States v. Alpers,* 338 US 680, 681-682; 94 L ed 457, 460. And it may never be assumed that Congress intended an absurd result, nor one not consonant with natural facts. *United States v. Brown,* 333 US 18, 26-27; 92 L ed 442, 448-449. *United States v. Bryan,* 339 US 323, 338; 94 L ed 884, 894.

To say that the Congress intended to separate, segregate and separately evaluate two parts of a single property is manifestly absurd, if those two parts are non-separable, cannot be actually segregated, and if one of them has no value separate and apart from the other.

That was the factual situation developed by uncontradicted expert testimony in this case (pp 6-7 this petition).

It is clear that valuation of real property has been considered by this Court as having substantially an indivisible character. As to leasehold improvements this Court has said —

> " * * * It does not appear that if detached from the building they would then have any value, even as junk, over necessary cost of removal. It is clear that, if any value as of that time may be attributed to them, it is included in and not separable from that of the leased premises.
>
> "Equally conjectural would be assumption that the figures represent enhancement of value of the leased premises by reason of the improvements when new or as deteriorated at the end of the term. The leased property is capable of inventory and analysis for the purpose of ascertaining original and estimated present costs of its elements and

other relevant facts as indications of worth to be taken into account in determining its value; i. e., the money equivalent of the property as a whole. * * * "

M. E. Blatt Co. v. United States, 305 US 267, 278-279; 83 L ed 167, 171.

What then is the "value" of an unharvested crop if it has none separate and apart from an asset to which it was, at the time, inseparably attached?

While its presence might increase the value of other assets (Cf., *City of New York v. Sage,* 239 US 57; 60 L ed 143), that does not demonstrate a value for itself. (4)

Under the horticultural facts as set out in this cause, we do not see how any such value could be separately assigned; and we believe that it is of extreme importance to the administration of the revenues that the Commissioner be prohibited from attributing "value" to items or articles which have no value separate and distinct from those assets to which they are, at the time, inseparably attached.

(4) See discussion of "value" by Frank, C. J., in *Andrews v. Commissioner,* 135 F 2d 314, 317, CA, 2: "If you point a finger or a word ["value"] at nothing, your pointing will not convert the nothing into something . . . "

CONCLUSION

For the reasons stated, we believe that certiorari should be granted so that these important questions of federal law relating to the revenues, shall receive full consideration, and final and consistent determination.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15132

W. F. EDWARDS,
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vs.
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Respondent.

AND

L. C. EDWARDS, JR.,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE
Respondent.

Petitions for Review of Decisions of The Tax Court of the United States. (District of Florida)

January 18, 1955.

Before HUTCHESON, Chief Judge, and RIVES and TUTTLE, Circuit Judges.

PER CURIAM:

AFFIRMED. Watson v. Commissioner, 345 U.S. 544, rehearing denied, 345 U. S. 1003.